

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1248

Introduced by Senator Bowen

February 12, 2004

An act to amend Sections 2850, ~~2851~~, and 2854 of the Probate Code, relating to trustees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1248, as amended, Bowen. Statewide Registry: trustees.

Existing law requires the Department of Justice to maintain the Statewide Registry of conservators, guardians, and trustees. Existing law requires any person who wishes to serve as a trustee to register with the Statewide Registry, with certain exceptions, including Statewide Registry. *Existing law excepts from the requirements of the Statewide Registry conservators, guardians, or trustees who are related to the conservatee, ward, trustor, or vested beneficiary by blood, marriage, or adoption. Existing law also excepts trustees who administer less than 6 trusts at the same time. Existing law requires the department to make information in the registry available to a court for any purpose, while otherwise keeping the information confidential. Existing law permits the department to disclose whether a person is registered with the Statewide Registry upon a request.*

This bill would require the department to ~~make all information in the registry regarding a trustee available to a member of the public upon request~~ *disclose, upon request, whether an individual is registered with the Statewide Registry and if any complaints have been filed, as specified, on an individual. The bill would also require the department, upon request by a member of the public, to provide access to complaint information regarding an individual.*

The bill would except from the requirements of the Statewide Registry a conservator, guardian, or trustee when the person is related to the conservatee, ward, or trustor of the trust through domestic partnership or cohabitation. The bill would except from the requirements of the Statewide Registry a conservator, guardian, or trustee who is serving for the benefit of only one person or only one family, as defined. The bill would remove specified relationships with a vested beneficiary as means by which a conservator, guardian, or trustee is excepted from the requirements of the Statewide Registry, as described above, and would also eliminate the exception to the registration requirement for trustees who administer less than 6 trusts at the same time.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2850 of the Probate Code is amended to
2 read:
3 2850. (a) (1) The Department of Justice shall maintain a
4 Statewide Registry and shall make all information in the registry
5 available to the court for any purpose, but shall otherwise ~~be kept~~
6 *keep this information* confidential, except as provided in
7 ~~subdivision (f). On this section.~~
8 (2) (A) *On request, the registry may* shall disclose to the public
9 ~~whether the following:~~
10 (i) *Whether* an individual is or is not registered with the
11 Statewide Registry. ~~Except~~
12 (ii) *Whether any complaints have been filed in the Statewide*
13 *Registry, pursuant to subdivision (d), for a specific individual.*
14 (iii) *The educational background and professional experience*
15 *of an individual registered with the Statewide Registry.*
16 (B) *Upon request by a member of the public, the registry shall*
17 *provide access to complaint information regarding an individual.*
18 (3) *Except* as otherwise provided in Section 2854, all persons
19 who wish to serve as a conservator, guardian, or trustee or who are
20 currently serving as a conservator, guardian, or trustee shall
21 register with the Statewide Registry and shall reregister every
22 three years thereafter. “Registration” means the filing of a
23 declaration pursuant to subdivision (b).

(b) All conservators, guardians, and trustees required to file information with the clerk of the court pursuant to Section 2340 or required to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, or a fine of not more than two thousand dollars (\$2,000), or both that fine and imprisonment. The declaration shall contain the following information:

(1) Full name.

(2) Professional name, if different from *paragraph* (1).

(3) Business address.

(4) Business telephone number or numbers.

(5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.

(6) The names of the conservator's current conservatees, the guardian's current wards, or the current trusts administered by the trustee.

(7) The aggregate dollar value of all assets currently under the conservator's, guardian's, or trustee's supervision.

(8) Whether he or she has ever been removed for cause or resigned as conservator, guardian, or trustee in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.

~~(c) On request, the registry may disclose to a member of the public the educational background and professional experience of a conservator, guardian, or trustee registered with the Statewide Registry.~~

~~(d)~~ The Department of Justice may charge a reasonable fee to persons registering and reregistering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.

~~(e)~~

(d) Each court clerk shall forward a copy of any complaint filed with that court, and found to be meritorious by that court, against a conservator, guardian, or trustee in his or her capacity as a conservator, guardian, or trustee for inclusion in the Statewide Registry. The Statewide Registry shall place any copies of those

1 complaints in the file of that conservator, guardian, or trustee. No
2 anonymous complaint may be considered pursuant to this section.

3 ~~(f) The Department of Justice shall make all information in the~~
4 ~~registry regarding a trustee available to a member of the public~~
5 ~~upon request.~~

6 SEC. 2. Section 2851 of the Probate Code is amended to read:

7 2851. (a) A court may not appoint a person as a conservator,
8 guardian, or trustee unless that person, if required to register under
9 Section 2850, is registered with the Statewide Registry.

10 (b) Any person serving as a conservator or guardian prior to
11 January 1, 2000, who does not register with the Statewide Registry
12 by either January 1, 2001, or by the date of the next required review
13 pursuant to Section 1850, whichever is sooner, shall be removed
14 as a conservator or guardian by the court. A trustee required to
15 register under Section 2850 who has not registered with the
16 Statewide Registry on or before January 1, 2005, shall be removed
17 as a trustee by the court.

18 (c) In appointing, continuing the appointment, or removing a
19 person as conservator, guardian, or trustee, the court shall examine
20 and consider the information contained in the Statewide Registry
21 for that person. The information contained in the Statewide
22 Registry shall be made available to the court for this purpose, but
23 shall otherwise be kept confidential, except as provided by law,
24 including, but not limited to, subdivision (f) of Section 2850.

25 ~~SEC. 3.~~

26 SEC. 2. Section 2854 of the Probate Code is amended to read:

27 2854. (a) This chapter does not apply to any public
28 conservator, ~~public guardian, or or public guardian.~~

29 (b) ~~This chapter does not apply to any conservator, guardian,~~
30 ~~or trustee who when the person is related to the conservatee, ward,~~
31 ~~trustor, or vested beneficiary or trustor by blood, marriage, or~~
32 ~~adoption adoption, registered domestic partnership, or~~
33 ~~cohabitation. This~~

34 (c) *This chapter does not apply to any conservator, guardian,*
35 *or trustee who is serving for the benefit of only one person or only*
36 *one family. For the purposes of this subdivision, family means*
37 *people who are related by blood, marriage, adoption, or registered*
38 *domestic partnership, or are cohabitants.*

39 (d) *This chapter does not apply to any conservator or guardian*
40 *who is not required to file information with the clerk of the court*

1 pursuant to Section 2340, to any person or entity subject to the
2 oversight of a local government, including an employee of a city,
3 county, or city and county, or to any person or entity subject to the
4 oversight of the state or federal government, including an attorney
5 licensed to practice law in the State of California who acts as
6 trustee of only attorney client trust accounts, as defined in Section
7 6211 of the Business and Professions Code.

8 ~~(b)~~

9 (e) This chapter does not apply to any conservator who resided
10 in the same home with the conservatee immediately prior to the
11 condition or event that gave rise to the necessity of a
12 conservatorship. This subdivision does not create any order or
13 preference of appointment, but simply exempts a conservator
14 described by this subdivision from registration.

15 ~~(e)~~

16 (f) This chapter does not apply to a nonrelated guardian of the
17 person of a minor appointed by the court as the result of the
18 selection of a permanency plan for a dependent child or ward
19 pursuant to Section 366.26 of the Welfare and Institutions Code.
20 It also does not include a nonrelated guardian of the person of a
21 minor appointed pursuant to Section 1514 if that child is in receipt
22 of AFDC-FC payments and case management services from the
23 county welfare department, as evidenced by a Notice of Action of
24 AFDC-FC eligibility.

25 ~~(d)~~

26 (g) This chapter does not apply to a trustee who is any of the
27 following:

28 (1) Trust companies, as defined in Section 83.

29 (2) FDIC insured institutions, their holding companies,
30 subsidiaries or affiliates. For the purposes of this paragraph,
31 “affiliate” means any entity that shares an ownership interest with
32 or that is under the common control of, the FDIC insured
33 institution.

34 (3) Employees of any entity listed in paragraph (1) or (2) while
35 serving as trustees in the scope of their duties.

